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COMMERCE FOR JENNIFER DERSTINE

SENSITIVE

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SUBJECT: COMMERCE DESK OFFICER FOLLOWS UP INFORMAL COMMERCIAL
EXCHANGE (ICE) TALKS

¶1. (SBU) Summary: Commerce Nordic/Baltic desk officer Jennifer Derstine met with industry and GON representatives on a range of issues covered in the bilateral Informal Commercial Exchange (ICE) framework during her September 7 to 9 visit to Oslo. There has been limited progress on some elements of the ICE agenda, but no breakthroughs on longstanding problems such as intellectual property protection. The GON showed realism in its comments on Norwegian industrial participation in the Joint Strike Fighter (JSF) procurement. Derstine was accompanied by FCS Chief and Deputy PolCouns in her meetings. Readout of Derstine's meetings with industry representatives will be transmitted septel. Please see para 11 for an Action Request to the Department of Commerce regarding the Jones Act. End Summary.

Tour d'Horizon with Norwegian Government Representatives

¶2. (U) Derstine discussed the range of commercial issues on the ICE agenda with a GON interagency group led by Ole Andreas Lindeman, Deputy Director General, Ministry of Trade and Industry in Oslo on September 9. The group included representatives from the Norwegian ministries of health, finance and energy.

¶3. (U) Segway: FCS Chief registered concern that there has been virtually no progress on Segway's efforts to gain Norwegian regulatory approval. Lindeman informed that the Transport Ministry in a letter dated September 8, 2009, had responded to Segway's complaint dated December 18, 2008, regarding the Norwegian Public Roads Administration's initial decision to give only a very limited approval for guided tours in the Bodø region of Northern Norway. Lindeman handed over a copy of this letter, which proved to provide only minor concessions beyond those included in the first response to Segway's application. Following the April 2009 ICE talks, the Ministry of Trade and Industry had approached the Transport Ministry on the issue of how to get wider approval for Segway use in Norway, but the Norwegian traffic authorities were not able to give any positive signals, pointing to their assessment of already congested pedestrian and bicycle lanes in Norway and that Segway's use and safety track record in Sweden was inapplicable to the vehicles' potential use in Norway. The Transport Ministry, however, was open to Segway applying for other, limited use areas in Norway as a way for the Norwegian authorities to gain further experience on Segway's use in Norway.

¶4. (U) Nemko: This Norwegian firm, which is seeking regulatory approval as a recognized testing facility in the United States, has made contact with the U.S. Occupational Safety and Health Administration (OSHA). Lindeman said the case appears to be on its way to resolution. Derstine cautioned that approval was not yet assured. Should Nemko face pushback in their attempt to get a timeline for the regulatory approval process from OSHA, Derstine

offered to help get timeline information from OSHA.

15. (SBU) Nonrefillable Bottle Tax: Derstine acknowledged that the EFTA surveillance authority had dropped its investigation into Norway's tax, but pointed out that the environmental impact of use of nonrefillable bottles has been shrinking as more of the bottles are manufactured with recycled or organic materials and as the public's return rate for these bottles in Norway has increased. The Finance Ministry representative stated that he considers the case to be closed, though he said he would keep an open mind if research (planned by industry) shows that nonrefillable bottles have a lower environmental impact than previously assumed. Note: The Coca-Cola representative told us earlier that such a study could be completed over the next several months.

16. (SBU) Automotive Taxation/Standards: On industry concerns about Norwegian carbon dioxide emissions taxes, the Finance Ministry representative said the final Norwegian government budget, still under development, would contain amendments establishing a procedure for independent laboratories to document emissions according to European standards (this information is close hold). This would create the possibility for some U.S. autos to be imported at lower tax rates. On the new EU motor vehicles directive, the GON confirmed that it will await the recommendation of an EU working group looking at how to treat imports of non-EU type approved, new vehicles and whether or not to carry forward an exemption for third party used vehicles, similar to what is currently found in Paragraph 1-15 in the Norwegian legislation on motor vehicles. Regarding Norway's current regulations barring large U.S. trucks on safety grounds, Commerce asked the Norwegian side to explain Norway's safety concerns. Lindeman said he would follow up with the Transport Ministry on this. Commerce also informed the Norwegians that it was facilitating a visit for GON transport officials to a

U.S. motor vehicle bureau to exchange information on safety regulation implementation.

17. (SBU) Pharmaceuticals Issues: The GON representatives claimed that they have had a productive dialogue with industry, but there has essentially been no movement on gaps in patent protection for pharmaceuticals. The Health Ministry representative did note that a system to provide a six-month patent extension to compensate for industry testing for pediatric use of medicines should be adopted by early 2010. (Note: This is standard European practice and is sought by industry here. End Note.)

18. (SBU) Joint Strike Fighter (JSF): Lindeman spoke about Norwegian aspirations for industrial participation in the JSF procurement while recognizing that this program is based on best value rather than a traditional offset arrangement. He noted that Parliament desires the procurement to have an industrial benefit for Norway commensurate with the cost of the planes (around USD 5 billion). Lindeman stated that Industry-Trade and Defense State Secretaries (Deputy Ministers) had good meetings with Lockheed-Martin (L-M) and U.S. officials during their recent trip to the United States. The GON is looking for areas where Norwegian suppliers could meet L-M needs, including outside of F-35 procurement, such as in space technology and the use of composites in non-defense commercial applications. Lindeman assessed that there is a USD 1.9 billion gap between what Norwegian firms can realistically sell (about USD 3 billion) and the USD 5 billion in sales the Norwegians would like to realize in terms of industrial participation. He informed us that the Ministry of Trade and Industry must report to Parliament that this gap is filled before Parliament will move to finalize the procurement. Lindeman noted that L-M executives would visit Norway in November and that they would serve as joint organizers of an Industry Day here in November together with Innovation Norway.

19. (U) Energy Cooperation: The Energy Ministry representative noted a bilateral energy MoU with the U.S. Department of Energy and highlighted continuing Norwegian interest in cooperation, but without offering specific suggestions. Derstine noted U.S. interest in carbon capture and sequestration and green building standards.

110. (SBU) Intellectual Property: Derstine relayed industry's desire for better enforcement, including dedicated enforcement staff, as well as a system enabling cooperation with internet

service providers to allow industry to warn those infringing copyright. The GON told us a new copyright law is under development, with a draft expected in early 2010. Lindeman suggested that industry needed to do more to facilitate legal downloads of copyrighted works.

¶11. (U) ACTION REQUEST Re The Jones Act: Lindeman relayed a request from the Consultative Shipping Group (CGS) to U.S. Customs to extend the comment period to 90 days (to October 16, 2009) on proposed amendments to the Jones Act, which CGS claims will adversely impact U.S. oil and gas operations as well as shipping interests (e-copy sent to desk & EEB). Action Request for Commerce: Please advise whether such an extension is possible.

¶12. (U) ICE Action: The Norwegians suggested dropping the agenda item on competition concerns in the development of the Norwegian continental shelf from the ICE action plan. Commerce agreed to review the status.

¶13. (SBU) Salmon: Lindeman raised anti-dumping and countervailing duties (AD CVD) on fresh and chilled Atlantic salmon, but in a pro-forma manner. He said Norway had not taken steps to encourage exports under the AD CVD order (which would enable a review of the order) so as to avoid giving legitimacy to the trade measures.

¶14. (U) Black Liquor: The Norwegians thanked the U.S. side for the quick response to their inquiry on the use of the tax credit for alternative fuel mixtures by the U.S. pulp and paper industry. Derstine reconfirmed that Congress seems poised to let the use of this tax credit for pulp and paper production expire. If Congress takes no action, pursuant to the existing statutory language, the tax credit will expire on December 31, 2009.

¶15. (U) Helicopter Procurement: Acknowledging U.S. commercial interest in the project, GON representatives estimated that - despite an earlier timeline putting the Request for Qualifications (RFQ) in May 2009 - it would take at least one year and parliamentary approval to reach the RFQ stage for helicopter acquisition.

¶16. (U) POHS (Prohibition on Certain Hazardous Substances in Consumer Products): Lindeman confirmed that Norway is still considering prohibiting the use of 10 hazardous substances, over and above what the EU has prohibited in its Restrictions on Hazardous Substances (RoHS) regulation. Implementation has been postponed due to the magnitude of comments and concerns on the legislation submitted to the Norwegian government. Despite saying in April 2009 ICE talks that a two-year implementation transition period was feasible, the Ministry of Trade and Industry now says that Norwegian regulations only permit a 6- to 12-month transition, though they are not required to have one at all, and that given the substantial delays already introduced, a shorter transition period is more likely to be introduced.

¶17. (SBU) Comment: Although there were no breakthroughs on long-running trade problems, a cooperative spirit characterized the September 9 discussions. Lindeman's realistic attitude toward industrial participation in the JSF program is a very welcome signal. Post will work toward concrete progress on other ICE agenda items in the months before the next ICE meeting to be held sometime in the spring of 2010 in Oslo, Norway.

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